



**Original: English**

**No.: ICC-01/14-01/21**

**Date: 28 June 2022**

**TRIAL CHAMBER VI**

**Before:**

**Judge Miatta Maria Samba, Presiding Judge  
Judge María del Socorro Flores Liera  
Judge Sergio Gerardo Ugalde Godínez**

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II  
IN THE CASE OF  
*THE PROSECUTOR v. MAHAMAT SAID ABDEL KANI***

**Public**

**Decision on the Defence Request for an Extension of Time**

**Decision to be notified in accordance with regulation 31 of the *Regulations of the Court* to:**

**The Office of the Prosecutor**

Mr Karim A. A. Khan  
Mr Mame Mandiaye Niang

**Counsel for the Defence**

Ms Jennifer Naouri  
Mr Dov Jacobs

**Legal Representatives of Victims**

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants  
for Participation/Reparations**

**The Office of Public Counsel  
for Victims**

Ms Sarah Pellet  
Mr Tars van Litsenborgh

**The Office of Public Counsel  
for the Defence**

**States Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Mr Peter Lewis

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and  
Reparations Section**

**Other**

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**TRIAL CHAMBER VI** of the International Criminal Court (the ‘Chamber’), in the case of *The Prosecutor v. Mahamat Said Abdel Kani*, having regard to regulation 35(2) of the Regulations of the Court, issues this ‘Decision on the Defence Request for an Extension of Time’.

## **I. PROCEDURAL HISTORY**

1. On 8 June 2022, the Office of the Prosecutor (the ‘Prosecution’) filed the ‘Prosecution’s third request to introduce prior recorded testimony pursuant to rule 68(3)’ (the ‘Third Rule 68(3) Request’).<sup>1</sup>
2. On 13 June 2022, the Prosecution filed the ‘Prosecution’s Request for In-Court Protective Measures’ (the ‘Request for In-Court Protective Measures’)<sup>2</sup> and the ‘Prosecution’s fourth request to introduce prior recorded testimony pursuant to rule 68(3)’ (the ‘Fourth Rule 68(3) Request’).<sup>3</sup>
3. On 16 June 2022, the Defence filed a request for an extension of time to respond to the Third Rule 68(3) Request, the Request for In-Court Protective Measures and the Fourth Rule 68(3) Request (the ‘Request for Extension of Time’).<sup>4</sup>
4. On 16 June 2022, the Chamber suspended the time limits for responses to the three filings for which extension of the time limits were sought and shortened the time limit for responses to the Request for Extension of Time to 21 June 2022.<sup>5</sup>

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<sup>1</sup> ICC-01/14-01/21-348-Conf. A public redacted version was filed on 10 June 2022 ([ICC-01/14-01/21-348-Red](#)).

<sup>2</sup> ICC-01/14-01/21-356-Conf. A public redacted version was filed on 15 June 2022 ([ICC-01/14-01/21-356-Red](#)).

<sup>3</sup> ICC-01/14-01/21-357-Conf. A public redacted version was filed on 20 June 2022 ([ICC-01/14-01/21-357-Red](#)).

<sup>4</sup> Requête de prorogation du délai de réponse à la « Prosecution’s third request to introduce prior recorded testimony pursuant to rule 68(3) » (ICC-01/14-01/21-348-Conf), à la « Prosecution’s Request for In-Court Protective Measures » (ICC-01/14-01/21-356-Conf) et à la « Prosecution’s fourth request to introduce prior recorded testimony pursuant to rule 68(3) » (ICC-01/14-01/21-357-Conf) en vertu de la Norme 35 du Règlement de la Cour., ICC-01/14-01/21-363-Conf. A public redacted version was filed on 22 June 2022 ([ICC-01/14-01/21-363-Red](#)).

<sup>5</sup> Email sent from the Chamber to the parties and participants on 16 June 2022 at 19:01.

5. On 21 June 2022, the Prosecution filed its response to the Request for Extension of Time (the ‘Prosecution’s Response’).<sup>6</sup>
6. On 21 June 2022, the Office of Public Counsel for Victims (the ‘OPCV’) filed its response to the Request for Extension of Time (the ‘Victims’ Response’).<sup>7</sup>
7. On 21 June 2022, the Prosecution filed the ‘Prosecution’s fifth request to introduce prior recorded testimony pursuant to rule 68(3)’.<sup>8</sup>
8. On 24 June 2022, the Prosecution filed the ‘Prosecution’s sixth request to introduce prior recorded testimony pursuant to rule 68(3) and to include two items to the List of Evidence’.<sup>9</sup>
9. On 27 June 2022, the Prosecution filed the ‘Prosecution’s seventh request to introduce prior recorded testimony pursuant to rule 68(3), in relation to P-0291, P-0349, P-0884, P-2232, P-2251, and P-2328’.<sup>10</sup>

## II. ANALYSIS

10. Regulation 35(2) of the Regulations of the Court provides that the Chamber may extend a time limit if good cause is shown.
11. The Defence submits that an extension of time is justified on the basis that responding to the applications to introduce prior recorded testimony pursuant to rule 68 and in-court protective measures requests requires detailed work and an analysis of a large volume of evidence.<sup>11</sup> The Defence underlines its competing workload in

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<sup>6</sup> Prosecution’s response to the Defence requests to vary the time limit (ICC-01/14-01/21-363-Conf), [ICC-01/14-01/21-369](#).

<sup>7</sup> Victims’ response to the “*Requête de prorogation du délai de réponse à la ‘Prosecution’s third request to introduce prior recorded testimony pursuant to rule 68(3)’ (ICC-01/14-01/21-348-Conf), à la ‘Prosecution’s Request for In-Court Protective Measures’ (ICC-01/14-01/21-356-Conf) et à la ‘Prosecution’s fourth request to introduce prior recorded testimony pursuant to rule 68(3)’ (ICC-01/14-01/21-357-Conf) en vertu de la Norme 35 du Règlement de la Cour*” (ICC-01/14-01/21-363-Conf), [ICC-01/14-01/21-370](#).

<sup>8</sup> ICC-01/14-01/21-371-Conf.

<sup>9</sup> ICC-01/14-01/21-374-Conf.

<sup>10</sup> ICC-01/14-01/21-376-Conf.

<sup>11</sup> [Request for Extension of Time](#), paras 7-19.

preparing for trial.<sup>12</sup> On this basis, the Defence argues that there is good cause for extension of the time limits to a maximum of one month before the anticipated date of the witness's testimony for its responses to: (i) requests for admission of previously recorded testimony under rule 68(3) of the Rules; and (ii) possible applications for in-court protective measures.<sup>13</sup> The Defence submits that this approach would allow it to consolidate its work in preparation for each witness in the most efficient manner and to streamline its preparation for trial.<sup>14</sup> In the Defence's view, this timeline would not affect the management of proceedings as the witness will be appearing before the Chamber in any event and the grant of in-court protective measures is not an urgent matter.<sup>15</sup>

12. The Prosecution opposes the Request for Extension of Time and argues that if it 'were granted, planning of witness testimony would be immensely complicated and a streamlined Prosecution case rendered impossible'.<sup>16</sup> However, it 'does not oppose a limited but reasonable extension request of several days per motion which would not risk to upend the efficiency of the trial preparation phase'.<sup>17</sup>

13. The OPCV also opposes the Request for Extension of Time, highlighting the tardiness of the Request for Extension of Time, the fact that the Defence requests an extension of deadlines that have already been extended, and the negative impact it would have on the well-being of witnesses if the Request for Extension of Time were to be granted.<sup>18</sup>

14. Having considered the submissions of the parties and participants, the Chamber considers the Defence's proposal to delay its responses to requests pursuant to rule 68(3) of the Rules and requests for in-court protective measures to one month before the anticipated date of each witness's testimony to be unworkable in practice. In particular, the Chamber is persuaded by the arguments of the Prosecution and the OPCV that the timeline proposed by the Defence would engender difficulties in terms

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<sup>12</sup> [Request for Extension of Time](#), paras 20-24.

<sup>13</sup> [Request for Extension of Time](#), p. 13.

<sup>14</sup> [Request for Extension of Time](#), paras 30-32.

<sup>15</sup> [Request for Extension of Time](#), paras 33-34.

<sup>16</sup> [Prosecution Response](#), para. 4.

<sup>17</sup> [Prosecution Response](#), para. 11.

<sup>18</sup> [Victims' Response](#), paras 12-14.

of logistical planning and potentially have a negative impact on the well-being of witnesses. Therefore, the Chamber rejects the Request for Extension of Time.

15. Nonetheless, the Chamber takes note of the Defence's workload in preparing for trial and the fact that the Defence's responses to numerous requests pursuant to rule 68(2)(b) of the Rules and the first two requests pursuant to rule 68(3) of the Rules will be filed on a rolling basis up until 20 July 2022 due to extensions already granted. It considers that a further limited extension of the time limit for responses to the Request for In-Court Protective Measures and all outstanding rule 68(3) requests will facilitate the Defence's organisation of its workload and will not have a negative impact on trial preparations. In these circumstances, it considers that good cause has been shown for a limited extension of the relevant time limits pursuant to regulation 35(2) of the Regulations of the Court.

16. The Chamber notes that the requirements for the introduction of previously recorded testimony under rule 68(3) of the Rules are more limited than those regulating requests pursuant to rule 68(2) of the Rules. It further notes that rule 68(3) witnesses will be present before the Court and available to be examined by the Prosecution, Defence and Chamber. In this sense, the introduction of the previously recorded testimony of such witnesses carries less risk of prejudice to the Defence and responses to requests pursuant to rule 68(3) are less demanding in terms of time and resources. Therefore, the Chamber considers a limited extension of the time limit to 20 July 2022 for responses to the outstanding rule 68(3) requests to be reasonable.

17. Regarding the Request for In-Court Protective Measures, the Chamber notes the Defence's argument that its response requires an analysis of the circumstances of each witness to determine whether the Prosecution has demonstrated a real, objective and concrete risk weighing on the witness, taking into account the content of the previous witness's statement, the present circumstances of the witness and the current situation in the country.<sup>19</sup> The Chamber considers that a limited extension of time, to 13 July 2022, to be reasonable for the purposes of this analysis.

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<sup>19</sup> [Request for Extension of Time](#), para. 15.

**FOR THESE REASONS, THE CHAMBER HEREBY****REJECTS** the Defence Request for Extension of Time;**EXTENDS** the time limit for the Defence's response to the Request for In-Court Protective Measures to 13 July 2022; and**EXTENDS** the time limit for the Defence's responses to the third, fourth, fifth, sixth and seventh rule 68(3) applications to 20 July 2022.

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**Judge Miatta Maria Samba**  
**Presiding Judge**



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**Judge María del Socorro Flores Liera**

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**Judge Sergio Gerardo Ugalde Godínez**

Done in both English and French, the English version being authoritative.

Dated 28 June 2022

At The Hague, The Netherlands